



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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U.I.L.: **501.03-00; 501.05.00;  
501.06-03**

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Association =

Foundation =

Union =

Dear

We have considered your ruling request dated January 12, 2009 as modified by your letters of November 2, 2010, January 28, 2011, and September 29, 2011 regarding the effect of a proposed restructuring from an organization tax-exempt under § 501(c)(3) into three new entities classified as tax-exempt under §§ 501(c)(3), (5), and (6) of the Internal Revenue Code ("Code").

Facts:

You are a charitable and educational organization, exempt from federal taxation under § 501(c)(3) of the Code and classified as not a private foundation pursuant to § 509(a)(2). Your membership includes faculty, administrators, researchers, and related professionals at all types of American higher education institutions, as well as, the general public who support your mission. You were formed to promote academic freedom and freedom of expression in academia and in society in general. You are a national organization, although local autonomous chapters may be formed at individual institutions of higher education.

A primary mission is to develop policy statements on academic freedom and freedom of expression to include such related issues as quality of higher education, tenure, shared governance and due process, professional ethics, workplace discrimination, and collective bargaining. Your activities also include: mediation and litigation on an individual or group basis; publishing a bi-monthly magazine and offering annual training programs; making grants and awards to individuals in support of academic freedom; monitoring federal and state legislation and conducting limited direct and grassroots lobbying; providing incidental member benefits such as insurance and financial products; and supporting collective bargaining through financial and operational assistance to collective bargaining chapters.

Your wide-ranging activities are illustrated by your sources of annual revenues. Approximately eighty-five percent (85%) of your revenues come from membership dues. The balance comes from grant income, contributions, publication subscriptions and sales, meeting registrations, and dues paid to a collective bargaining fund by collective bargaining chapters.

You have determined that you can best achieve your broad mission by restructuring to segregate activities into separate, but related entities. Your restructuring is designed to transfer some of your current activities into the other entities. You have formed three tax-exempt entities in which to restructure: Association, a professional association exempt under § 501(c)(6); Union, a labor organization tax-exempt under § 501(c)(5); and Foundation, a charitable and educational organization tax-exempt under § 501(c)(3) and classified as a public charity pursuant to § 509(a)(1). You plan to transfer your existing assets and liabilities to Foundation, the new § 501(c)(3) public charity, and dissolve as part of the proposed restructuring plan ("Restructuring").

Your Restructuring will be guided by a Memorandum of Understanding ("MOU") and Cost Sharing Agreement ("Agreement") between you and the new entities. You represent that all charitable assets will be retained in the new § 501(c)(3), Foundation. You will transfer all of your assets and liabilities to Foundation, except your office furniture, equipment, and computer hardware and software. The entire inventory of these used items of personal property will be sold to Association at fair market value ("FMV").

As part of the Restructuring, Association will provide administrative functions for Association, Union, and Foundation pursuant to an Agreement and MOU. This will include Association acting as billing agent for Union. You will transfer to the new § 501(c)(6), Association, employees and liabilities going forward related to employment, such as payroll, retirement plans, and health insurance. You represent that Association's employees will be shared with Foundation and Union, with these two entities reimbursing the Association for their respective shares of the cost. You represent that Foundation will pay only those employment-related expenses documented by employee timesheets for actual work on § 501(c)(3) activities. A different allocation will be utilized for certain unfunded liabilities, such as post-retirement health care coverage for employees who transfer from you to Association as a result of the Restructuring. In this case, Foundation, as the transferee charity that received your assets and liabilities, will be responsible for that percentage of the employee's post-retirement benefit attributable to his or her time as an employee of you. You represent that all of Association's non-501(c)(6) activities together will not constitute Association's primary activities.

#### Requested Rulings:

1. The transfer of assets from you to the successor Foundation will not adversely affect your tax-exempt status under § 501(c)(3) of the Code.
2. Association may act as a billing agent for Union pursuant to a cost-sharing agreement without jeopardizing Association's tax-exempt status under § 501(c)(6) of the Code so long as all of Association's non-501(c)(6) activities do not constitute Association's primary activities.

Law:

Section 501(c)(3) provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(c)(5) provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Section 501(c)(6) provides, in part, for the exemption from federal income tax of business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations ("regulations") provides that an organization is not "organized exclusively" for one or more exempt purposes unless its assets are dedicated to an exempt purpose so that upon dissolution, its net assets are distributed for one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(5)-1(a) provides, in part, that the organizations entitled to exemption from income tax under § 501(c)(5) have no net earnings inuring to the benefit of any member and have as their object the betterment of the condition of those engaged in such pursuits.

Section 1.501(c)(6)-1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

In Rev. Rul. 71-504, 1971-2 C.B. 231, a medical society tax-exempt under § 501(c)(6) was denied reclassification as an organizations exempt under § 501(c)(3) because of its substantial non-charitable and non-educational purposes and activities.

In Rev. Rul. 71-505, 1971-2 C.B. 232, a bar association tax-exempt under § 501(c)(6) was

denied reclassification as an organizations exempt under § 501(c)(3) because of its substantial non-charitable and non-educational purposes and activities.

In Better Business Bureau v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the presence of a single non-charitable or non-educational purpose, if substantial in nature, will preclude exemption under § 501(c)(3) regardless of the number or importance of truly charitable or educational purposes.

#### Analysis:

##### Ruling Request No. 1:

You are an association tax-exempt under § 501(c)(3) and classified as a public charity under § 509(a). As such, your assets are dedicated to one or more exempt purposes and may only be transferred to another public charity or to a Federal, state or local government for such exempt purposes upon dissolution. § 1.501(c)(3)-1(b)(4). The transfer of your § 501(c)(3) assets and activities to Foundation, another public charity, complies with the organizational requirements of § 501(c)(3) and will not adversely affect your tax-exempt status.

Under §§ 1.501(c)(3)-1(c)(1) and (2), an organization will not be regarded as being “operated exclusively” for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose or if its net earnings are distributed in whole or in part to the benefit of private shareholders or individuals. An organization may not be classified under § 501(c)(3) if it has substantial non-charitable and non-educational purposes and activities, regardless of the number or importance of truly charitable or educational purposes it may otherwise have. See Better Business Bureau v. U.S., 326 U.S. 279, 283 (1945); See also Rev. Rul. 71-504, 1971-2 C.B. 231 and Rev. Rul. 71-505, 1971-2 C.B. 232 (medical society and bar association exempt as § 501(c)(6) entities may not be reclassified as organizations exempt under § 501(c)(3) because of their substantial non-charitable and non-educational purposes and activities).

We have not evaluated nor determined whether your past activities that are not § 501(c)(3) activities are or have been more than an insubstantial part of your activities or if your net earnings were distributed in whole or in part to the benefit of private shareholders or individuals. Therefore, this ruling applies only to your transfer of assets to Foundation, and not to any other of your past, present, or future activities.

##### Ruling Request No. 2:

Association is organized as a business league under § 501(c)(6). Section 1.501(c)(6)-1 of the regulations defines a business league as an association of persons having a common business interest. The activities of the association must be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Thus, Association's primary activities must be described as permitted activities under § 501(c)(6) of the Code in order to meet the requirements for § 501(c)(6). Services for

individual members are not such activities. Among other activities, Association plans to act as a billing agent for Union. This is a business activity of a kind ordinarily carried on for profit. Whether this is a permitted service depends upon whether it is a primary activity of Association. Association will also provide administrative services for Union and Foundation. All of Association's non-501(c)(6) activities taken together must not constitute Association's primary activities for it to maintain its § 501(c)(6) status.

Ruling:

1. The transfer of assets from you to the successor Foundation will not adversely affect your tax-exempt status under § 501(c)(3) of the Code. This ruling does not address the affect on your tax-exempt status of any activities other than this transfer of assets to Foundation.
2. Association may act as a billing agent for Union pursuant to a cost-sharing agreement without jeopardizing Association's tax-exempt status under § 501(c)(6) of the Code so long as all of Association's non-501(c)(6) activities together do not constitute Association's primary activities.

This ruling will be made available for public inspection under § 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Virginia G. Richardson  
Acting Manager, Exempt Organizations  
Technical Group 4

Enclosure  
Notice 437